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BY FAX AND FIRST CLASS MAIL

Robert S. Sinsheimer, Esquire
92 State Street, 9th floor
Boston, Massachusetts 02109

Re: Erwin v. McDermott et al
Civil Action No. 11-11328-NMG

Dear Mr. Sinsheimer:

First, sincere condolences on the death of your mother-in-law.

The owner of the Foxy Lady nightclub is, I believe, a Massachusetts corporation known as Frank's of Brockton, Inc. As I said in my summary judgment brief, this is a matter of public record. Of course, you have a right to depose Mr. Tsoumas. It is too elementary for discussion that nonparties are subject to deposition. But I am fairly certain that his affidavit is not "technically" accurate but fully accurate.

I shall be out of the office from January 26th to February 2nd, both dates inclusive. I look forward to reading your opposition to my motion for summary judgment when it arrives.

Sincerely,


David Berman

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Not read prior to being sent.